



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kibet (Criminal Case E016 of 2023)
[2025] KEHC 12477 (KLR) (8 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12477 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E016 OF 2023
RN NYAKUNDI, J
SEPTEMBER 8, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMSON KIBET ALIAS EVANS KIPKOECH ALIAS HSTLER ACCUSED

JUDGMENT

1. Samson Kibet Alias Evans Kipkoech Alias Hustler was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the 3rd day of June, 2023 in Olare location, Ainabkoi Sub-County within Uasin Gishu County, in the Republic of Kenya jointly with another not before court murdered one Salome Jepkoech Maritim.
2. The Accused appeared before this Court for arraignment and entered a plea of not guilty. This plea activated the constitutional presumption of innocence under Article 50(2)(a) of *the Constitution*, placing the burden of proof squarely upon the Prosecution. Mr. Mark Mugun initially represented the Prosecution, after which Ms. Kirenge took over conduct of the case, while Mr. Sonkule appeared as Legal Counsel for the Accused.
3. The summary of the Prosecution's case is based on the testimony of 6 witnesses whose testimonies have been summarized as hereunder:
4. PW1- Luka Cheruiyot Saina took the stand and testified that on 3rd June, 2023, he received information that the deceased who, was his estranged wife, had been killed. He attended the post mortem process where he positively identified the deceased and was informed that the deceased had died due to strangulation.
5. Next was PW2- James Kering Rono. He testified that on 3rd June, 2023, he heard someone yelling at the homestead of one Rebecca and on following up was informed that someone had been raped in Rebecca's homestead. He went to the scene and found the deceased lying in a maize farm without



- clothes and seemed to be unwell. He advised the ladies nearby to cover her up so that they could take the deceased to hospital but noticed that the deceased had already passed on.
6. PW3 – Rebecca Jeruto, a traditional brew maker and farmer told the Court that she personally knew the deceased as Mama Cheru and that she (the deceased) would often come to her house to assist in chores. On 3rd June, 2023, PW3 was together with the deceased in the kitchen cleaning utensils after which PW3 was together with the deceased in the kitchen cleaning utensils after which PW3 left briefly to talk to someone else outside and to fetch potatoes, leaving the deceased in the house. She added that there was one other man, one Arap Nyagah in the house who was enjoying his brew and who was later joined by the accused. That after a few minutes, she noticed the accused carrying the deceased in his arms saying that he was taking her to a shade behind the house. It was established from this evidence that the deceased had a tobacco habit that would sometimes make her lose consciousness but that she would later be conscious after a few minutes of receiving fresh air right outside the house. That in this case however, it took long before PW3 would see either the deceased or the accused after they had gone behind the kitchen, prompting her to send one Chepng'etich to find out what was happening. Chepng'etich reported that she saw the accused with the deceased in the maize plantation in weird circumstances prompting the curiosity of PW3 further. She went in to the maize plantation, which was a relatively good distance from the house and found the deceased lying unconscious facing upwards and half naked as her private parts were exposed and there were some fluids coming out of her vagina. Her mouth was foaming. The accused at this point had since fled the scene. The ladies covered the deceased and attempted to give her first aid by giving sugary tea. PW3 raised the alarm and notified the village elder leading the police to come to the scene.
 7. PW4 was Florida Chepng'etich who testified that on the material date, she was at Rebecca's home and confirmed that the deceased was together with the accused and another person Arap Nyagah in Rebecca's kitchen. She later on saw the accused carrying the deceased out of the kitchen to a shade behind the kitchen. Upon being instructed by Rebecca, she went to check on the deceased but in fact did not find her and the accused behind the house. She walked further to the maize plantation and found the accused on top of the deceased as though he was having sex with her. The accused however did not see her. She immediately ran back to inform Rebecca and they went back to the maize field together at which point the accused had already fled. She covered the deceased and tried to wake her up but she was not responsive. Together with Rebecca, they tried to give her sugary tea but noticed that the deceased was unable to swallow and had began discharging a white foam from her mouth. It was at this point that they called out for help prompting the authorities to come.
 8. CPL Nzau, the Investigating Officer testified as PW5. When notified of the incident, he went to the scene together with the Officers and confirmed seeing the deceased's body together with her inner garments scattered around the maize field. He interviewed the witnesses present and took the body to mortuary for preservation and ensured the post mortem was conducted. He further noted that the accused had disappeared immediately after the incident and did not return till a month later when the Officers were notified leading to his arrest.
 9. Finally, Dr. Chesori testified as PW6 and produced the post mortem form as Exhibit 1. It was noted that the deceased had both external and internal injuries including a black eye and partial damage to her lungs and liver as a result of her drinking and smoking but ultimately noted that her cause of death was asphyxia due to neck compression i.e. strangulation.
 10. It was at the close of the Prosecution case when this court was demanded by the law to make a finding whether prima facie case had been made out for the trial to move from half time to the second half which will necessitate compliance with Section 306 of the Criminal Procedure Code to call upon the accused person to state his defence. This evidence was appropriately weighed, analyzed and assessed



and a view taken that the Prosecution have discharged the burden of proof of establishing a prima facie case on the ingredients of the offence calling for the accused person to give evidence to challenge it or even at the very best elect to keep silent. The defence which was under the legal leadership of Mr. Sonkule Advocate proceeded to state their case as herein under recorded by this court:

Defence

11. The accused Samson Kibet in his sworn statement took the court through a chronology of events arising from the allegations by the State touching on the 3rd June 2023. The accused went further to inform the court that he woke up early and went about his chores as usual. In the course of that he met one person whom they usually undertake casual jobs together within the village and agreed that they can spend sometime taking some alcoholic brews at Leah's place but on taking one cup it was not properly brewed. That is when they decided to move to another home occupied by Rebecca who is also a brewer of alcoholic drinks mainly chang'aa which they also decided to taste. In that same place there was also another brewer by the name Florida. As Rebecca served them with the alcoholic drinks, she left them speaking with Florida and when he entered the house he saw Salome lying down on the floor. According to the accused, he immediately thought that the deceased was intoxicated. However, there was commotion and Rebecca, the brewer and owner of the house, asked them to carry Salome outside and place her under a shade so that she could regain consciousness. It was the accused's testimony that he simultaneously saw Salome pick up a piece of cane and start beating the deceased, while one Nyaga was having sexual intercourse with the same lady. In his assessment, the accused explained to the Court that he left the scene, only to be arrested later on allegations of having killed the deceased, which he vehemently denied.
12. The second witness summoned by the defence was that of Kipruto who told the court that he operated a boda boda and on the 3rd June 2023 he was taking alcoholic drinks at the house of one Rebecca who brews that kind of substance. The witness actually confirmed that she brews busaa and distils chang'aa. On this material day DW2 went further to explain the nature of their social encounter with the other customers who were at this joint operated by Rebecca for purposes of taking alcoholic drinks. According to DW2, Salome worked at the same home where the brewing took place. In addition, she smoked tobacco and had a pre-existing condition of convulsions. Regarding the events of the material day, DW2 testified that he saw Salome, now deceased, inside the house, and that the accused requested assistance to lift her out of the house. According to DW2, one Nyaga assisted in removing the deceased, after which he began inflicting injuries upon her. It was from these injuries that the deceased eventually succumbed to death.
13. DW3 Jimmy Mbindyo on oath told the Court that on the 3rd June 2023 he had gone to visit a friend who invited him to go to a particular center so that they can partake of alcoholic drinks. He denied seeing the Accused inflict harm to the deceased.

Analysis and determination

14. The Prosecution brought forth six key witnesses to shoulder the weighty burden of establishing guilt beyond reasonable doubt. Their pivotal testimony illuminated the following critical elements:
 - a. That the deceased is dead.
 - b. That the death was unlawfully caused.
 - c. That besides the unlawful act or omission there was malice aforethought.
 - d. That there is prima facie evidence directly or circumstantially placing the accused at the scene.



15. The question that arises is whether, in evaluating the prosecution's evidence against that of the defence, the prosecution - as a constitutional organ under Article 157 of *the Constitution* has discharged the burden of proof beyond reasonable doubt. For the prosecution to meet this standard, it must satisfy an evidential threshold. This is precisely why sections 107(1), 108, and 109 of the *Evidence Act* assume great significance when a trial court undertakes to analyze the evidence along this trajectory.
16. Learned Author Musyoka and a Judge of the High Court highlighted this issue of the burden of proof in criminal cases in his well-written Treatise Criminal Law 2nd Edition (2013) at page 71-72 as follows:

The State or prosecution has the burden of proof in criminal cases. The burden is linked to the presumption of innocence. The standard of proof is beyond reasonable doubts. The state has to prove that the accused has committed the actus reus elements of the offence charged, with the mens rea required for that offence. Proof of the actus reus of the offence requires proof of all its elements. The state has to discharge its burden of proof on any given issue, and loses on that issue if upon the evidence a doubt is created in the mind of the court. Such doubt is resolved in favour of the accused person, and the state is said to have failed to prove its case beyond reasonable doubt. Since the burden is proof of most of the issues in the case beyond reasonable doubt, the guilt of the accused must be established beyond reasonable doubt. It was stated in *Mwaula and Another v The Republic* [1980] KLR 127 [1976-80] 1 KLR 1656 (Law, Miller and Potter JJA), that mere silence by the accused person does not of necessity invite a finding that the prosecution has established its case beyond all reasonable doubt. The fact that the accused person takes no part at all in the proceedings after pleading not guilty does not relieve the prosecution of the burden of proving the inculpatory facts beyond all reasonable doubt.

It was emphasized in *Mbugua Kariuki v Republic* [1976-80] 1 KLR 1085 (Law Wambuzi and Potter JJA), that the burden of proof remains on the state throughout, to establish the case against the accused beyond reasonable doubt. Where the defence raises an issue such as provocation, alibi, self-defence, the burden of proof does not shift to the accused, instead the prosecution must negate that defence beyond reasonable doubt and the accused assumes no onus in respect of any such defence. In *Longinus Komba v Republic* (1973) LRT 127 (Onyiuke J), it was stated that an accused person ought to be convicted on the strength of the prosecution's case and not on the weakness of the accused's defence, as the burden of proof, in criminal cases, is on the state to establish its case beyond reasonable doubt. The fact that the accused may have told lies to the court rendering his defence weak does not absolve the trial court from ascertaining from the whole evidence whether the offence with which he is charged has been proved beyond reasonable doubt.

17. Therefore, the ultimate goal for the verdict of the court to be decisive is for the prosecution to discharge that standard and burden of proof with that of reasonable doubt. In the opening statement elsewhere in this judgment there are four key elements which must be supported by evidence for the accused person to be rendered guilty. Thus:
 - a. The death of the deceased: It is trite that death is approved by medical evidence or on the hand circumstantial evidence. It is usually the core element for a discussion to ensue under Section 203 of the Penal Code. There must be a dead human being positively identified for a criminal code to start the conversation of an offence having been committed within the scope of these provisions. In the instant case the deceased Salome is dead. Am guided by the post mortem report dated 12th June 2023. The defence does not even dispute this element. In legal science it's proven beyond any reasonable doubt.



- b. The second element is on the cause of death which must be proved to be unlawful. It is also a crucial element especially going by the provisions of Section 213 of the Penal Code. The Court must answer what was the proximate cause of the death of the deceased, hence the position in Kenya that every homicide is unlawful unless excusable or justified under the provisions of the law like self defence or provocation as specified in Section 17 and Section 207 as read with 208 of the Penal Code. *The Constitution* of Court of South Africa in Thebus was on point on this issue when he remarked as follows:

“In our law, ordinarily, in a consequence crime, a causal nexus between the conduct of an accused and the criminal consequence is a prerequisite for criminal liability. The doctrine of common purpose dispenses with the causation requirement. Provided the accused actively associated with the conduct of the perpetrators in the group that caused the death and had the required intention in respect of the unlawful consequence, the accused would be guilty of the offence. The principal object of the doctrine of common purpose is to criminalize collective criminal conduct and thus to satisfy the social ‘need to control crime committed in the course of joint enterprises’. The phenomenon of serious crimes committed by collective individuals, acting in concert, remains a significant societal scourge. In consequence crimes such as murder, robbery, malicious damage to property and arson, it is often difficult to prove that the act of each person or of a particular person in the group contributed causally to the criminal result. Such a causal prerequisite for liability would render nugatory and ineffectual the object of the criminal norm of common purpose and make prosecution of collaborative criminal enterprise intractable and ineffectual.”

18. In homicide cases under Section 203 of the Penal Code, it is required of the court to establish causation through factual cause (the ‘but-for test’) and legal cause (also known as proximate cause) to show a direct link between the accused’s actions and the victim’s death. Legal causation considers whether the accused’s actions were a substantial or operative cause of the harm, excluding those where the connection is a mere coincidence or the result of an intervening event that breaks the chain of causation. In so far as the prosecution case is concerned, PW3 told the court that it was the accused person who carried away the deceased from the house to the outer part of the same building and apparently both of them went missing for a while. When PW3 sent one Chepng’etich PW4 to trace and search for the whereabouts of the deceased and the accused person, she came back with a report that she saw them in the maize plantation in weird circumstances prompting the curiosity of PW3 to confirm the reporter’s message. On arrival at the scene, PW3 came into contact with the deceased lying unconscious facing upwards and half naked exposing her private parts and some fluids coming out of the reproductive organ. What was intriguing to PW3 was the fact that the accused person who carried the deceased was nowhere to be seen. This incident which resulted in the death of the deceased was also graphically described in evidence by PW4 who placed the accused as the locus in quo. The accused person and his defence witnesses in the mixed grill of facts proven and non-proven never answered or controverted the prosecution evidence of PW3 and PW4. In the course of this social evening of drinking chang’aa by various customers at Rebecca’s den, it appears each one of them had an objective of getting intoxicated and were not able to keep vigil on the plan hatched by the accused and executed with precision of raping his victim and strangling her as it is confirmed in the post mortem report. The statements in evidence by the accused person and his co-witnesses reading them in and out can be described as conspiratorial and evasive. In my view the death of the deceased was unlawfully caused.



19. The third element is that of malice aforethought. Malice aforethought can be manifested in many elements as Parliament legislated under Section 206 of the Criminal Procedure Code. In brief it constitutes:
- a. An intention to cause the death of grievous harm to another person.
 - b. Knowledge that the Act, it is omission will cause death.
 - c. An intention to commit a felony.
 - d. An intention to facilitate the escape from custody of a person who has committed a felony.
20. There are illustrative cases like *Tubere s/o Ochen v R* 1946 12 EACA 63 and *Republic v Lokutan* (Criminal Case E013 of 2021) [2025] KEHC 3469 on malice aforethought which go an extra mile to demonstrate that the element is one of the crucial of the other three to be proven to establish the offence of murder contrary to Section 203 of the Penal Code. Therefore, to prove a murder charge, it has got to be inferred from the weapon used, the gravity of injuries and the assailants conduct before, during and after the attack. The mens rea of the offence is malice aforethought. In the persuasive case of *Enock Kipela v. Republic* the CA No. 15 of 1994, the Tanzanian Court of Appeal held that any or all of the conditions below can satisfy the presence of malice aforethought; Thus;
- “Usually an attacker will not declare his intention to cause death or grievous bodily harm. Whether or not he had that intention must be ascertained from various factors, including the following:
- (1) the type and size of the weapon, if any, used in the attack,
 - (2) the amount of force applied in the assault,
 - (3) the part or parts of the body the blow was directed at or inflicted on,
 - (4) the number of blows, although one blow may, depending upon the facts of the particular case,
 - (5) the kind of injuries inflicted,
 - (6) the attacker’s utterances, if any, made before, during or after the killing; and
 - (7) the conduct of the attackers before and after the killing.”
21. In the instant case, the evidence is very clear that the accused and other customers had set themselves in some kind of drinking spree on the material day when the deceased met her death. There is evidence on record that at the initial home of a brewer their alcoholic drinks had not matured and the accused with his friend preferred to go to Rebecca’s house where they spent sometime enjoying the social evening. It was at this very home that the deceased was working as a helper. As the drinking session progressed and more customers joined in, the deceased, who had been in the kitchen, soon appeared to be intoxicated. At that point, the accused carried her out of the house and eventually into the maize plantation. The other customers remained focused on ordering more alcoholic drinks specifically chang’aa and paid little attention, as there was no expectation that an offence of such magnitude would occur in that homestead. It was only when Rebecca, the owner of the homestead, raised an alarm and informed Florida (PW4), whom she sent to check on the whereabouts of her employee, that the reality began to unfold. PW4 eventually confirmed the worst, that the accused and the deceased were holding each other in a suspicious and compromising state. In her testimony, PW4 stated that it never occurred to her that from that moment the deceased would not be seen alive again. The follow-up by PW3, who



revisited the scene, brought the tragic news of the deceased's death. By then, the accused was neither inside the house nor at the spot where the naked body of the deceased lay. I am satisfied that both the strands of direct evidence and the circumstantial evidence adduced by the prosecution witnesses materially satisfy the legal criteria to place the accused at the center of this crime. The court in the case of *Judith Aching' Ochieng' v Republic*, Criminal Appeal 128 of 2006 stated that:

It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy four tests:

- i. The circumstances from which the inference of guilt is sought to be drawn must be cogently and firmly established;
- ii. Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
- iii. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else;
- iv. In other words, in order to justify a finding of guilt, the circumstantial evidence, in its totality, ought to be such that the incriminating facts lead to the unimpeded conclusion of guilt and that there are no co-existent facts that are capable of explanation upon any reasonable hypothesis other than that of the accused's guilt."

22. The circumstances of this case must be weighed alongside the doctrine of 'last seen theory' as illuminated by the Supreme Court of India in *State of UP v. Satish* (2005) 3 SCC 114; Thus:

"The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and then the deceased is found dead is so small that possibility of any person other than the accused being a part of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long-time gap and the possibility of other person coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."

23. Arising from the facts of this case, the accused was a person well known to PW3 and PW4. He had spent some time consuming chang'aa at the homestead. Conspicuously, the circumstances of "last seen" are inferred from the moment the deceased, who had been in the kitchen of the same house, appeared overwhelmed and intoxicated. The accused then took it upon himself to carry her out of the house, ostensibly to place her under some shade so that she could recuperate. However, that is not what transpired in reality. The clear and consistent evidence of PW3 and PW4 is that from the moment the accused carried the deceased outside perhaps even under the guise of applying first aid, he was not seen again, until later when the deceased was discovered motionless in the maize plantation.

24. The Post-Mortem Report dated 12th June 2023 established that the deceased had bruising of the anterior neck, bilateral soft tissue damage, scalp bruising, and injuries to the eye. Consequently, the pathologist opined that the cause of death was asphyxia due to neck compression (strangulation). It was further alluded to in the report that the deceased was suspected to have been raped before death. In these circumstances, the "last seen" theory becomes relevant and compelling, strongly implicating the accused as the person who raped the deceased and, having accomplished that mission, strangled



her to death. There was no evidence of a third party having gained access to the maize plantation to commit this heinous act.

25. This court must answer the issue on the element of identification. This was a case of recognition and the court can draw correct inferences from the principles in the case of *Abdala bin Wendo v. Republic* 1953 20 EACA 166 the court pointed out inter alia that:

“Subject to certain exceptions, it is trite law that a fact may be proved by the testimony of a single witness, but this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification especially when it is known that the conditions favouring a correct identification were difficult

26. In the same category of principles, the Supreme Court of Uganda in *Abdula Nabulere & 2 others vs Uganda*, Criminal Appeal No. 009 of 1978 observed:

“Where the case against an accused depends wholly or substantially on correctness of one or more identifications of the accused, which defence disputes, the Judge should warn himself and the assessors of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. The reason for the special caution is that there is a possibility that a mistaken witness can be a convincing one and that even a number of such witnesses can all be mistaken. The Judge should then examine closely the circumstances in which the identification came to be made, particularly, the length of the time the accused was under observation, the distance, the light, the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good, the danger of a mistaken identity is reduced but the poorer the quality, the greater the danger.

In our judgment, when the quality of identification is good, as for example, when the identification is made after a long period of observation or in satisfactory conditions by a person who knew the accused well before, a court can safely convict even though there is no ‘other evidence to support to identification evidence; provided the court adequately warns itself of the special need for caution. If a more stringent rule were to be imposed by the courts, the example if corroboration were required in every case of identification, affronts to justice would frequently occur and the maintenance of law and order greatly hampered.

When, however, in the judgment of the trial court, the quality of identification is poor, as for example, when it depends solely on a fleeting glance or on a long observation made in difficult conditions; if for instance the witness did not know the second accused before and saw him for the first time in the dark or badly lit room, the situation is very different. In such a case the court should look for ‘other evidence’ which goes to support the correctness of identification before convicting on that evidence alone. The ‘other evidence’ required may be corroboration in the legal sense; but it need not be so if the effect of the other evidence available is to make the trial court sure that there is no mistaken identification.”

27. The facts as established by PW3 and PW4 are consistent only with the hypothesis that the death of the deceased was caused by the accused. The explanations offered in his defence, together with those of his two witnesses are vague and incapable of persuading this Court to depart from the chain of evidence which is so complete that it leaves no reasonable doubt that the deceased’s life was unlawfully terminated by the accused. Guided by the principles discussed in this judgment, I therefore conclude that the prosecution has fully discharged its standard and burden of proof beyond reasonable doubt. Accordingly, the accused is found guilty of murder contrary to Section 203 of the Penal Code and a



verdict of conviction is hereby entered which shall form the basis for sentencing under Section 204 of the Penal Code.

Ruling On Sentence

28. The accused person Samson Kibet Alias Evans Kipkoech Alias Hustler was charged and convicted for the offence of murder contrary to section 203 as punishable under section 204 of the Penal Code. The matter was scheduled for hearing on sentence wherein the parties filed their respective written submissions on the question of sentence, which submissions are captured as hereunder:

The accused mitigation

29. Learned Counsel Mr. Sonkule while citing an excerpt from the book confessions by St. Augustine on which basis the accused seeks for forgiveness for his transgression in life. On this basis, learned counsel submitted that the accused person having been found guilty pleads leniency. The aims of sentencing as contained in the Judiciary sentencing policy guidelines including but not limited to rehabilitation and re-integration.
30. Further that the accused is a mid-aged adult who at his arrest had just started his family and since then, the family has been undergoing difficult moments. He was the sole bread-winner. Learned Counsel submitted that the accused regrets the circumstances in which the deceased lost her life. That he has learnt his lesson and is remorseful and prays for a second chance at life. He humbly prayed for a non-custodial sentence and gave an undertaking that he will be of a good character.
31. Finally, he prayed that the time spent in custody by the accused be factored in the final sentence.
32. Learned Counsel for the state Ms. Kirenge urged the court to consider the aggravating factors. She invited the court to consider the manner in which the offence was committed.
33. Learned Counsel in agitating for a proportionate sentence submitted that the circumstances in which the deceased was found reflects not only violence but also severe degradation and violation of the deceased's dignity. That the sentence that this court imposes must promote, and not undermine, human rights and fundamental freedoms.
34. Let me begin with the landmark decision in Francis Muruatetu & Another V Republic [2017] eKLR in which the Supreme Court of Kenya while retaining the death sentence found that its mandatory nature was unconstitutional and for the purposes of this sentence had this to say:

“45. To our minds what Section 204 of the Penal Code is essentially saying to a convict is that he or she cannot be heard on why in all the circumstances of his/her case. The death sentence should not be imposed on him or her, or that even if he or she is heard, it is only for the purposes of the record as at that time of mitigation because the court has to impose the death sentence nonetheless, as illustrated by the foregoing Court of Appeal decision. Try as we might we cannot decipher the possible rationale for this provision. We think that a person facing the death sentence is most deserving to be heard in mitigation because of the finality of the sentence.

46. We are of the view that mitigation is an important congruent element of fair trial. The fact that mitigation is not expressly mentioned as a right in *the constitution* does not deprive it of the necessity and essence in the fair trial



process. In any case, the right pertaining to fair trial of an accused pursuant to Article 50 (2) of *the Constitution* are not exhaustive.”

35. The court further stated that:

“ 58. We now lay to rest the quagmire that has plagued the court with regard to the mandatory nature of Section 204 of the Penal Code. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the Penal Code unfair thereby conflicting with article 25(c), 28, 48 and 50(1) and (2) (g) of *the Constitution*.”

36. The present case involves aggravating circumstances that place it among the more serious categories of murder cases. This involves the targeting and murder of a vulnerable woman who was in a state of temporary incapacitation due to her tobacco habit, making her an easy target for the accused's predatory behavior.

37. The principle of proportionality requires that the punishment imposed corresponds precisely to the seriousness of the conduct in question. The Judiciary Sentencing Guidelines emphasize that the sentence should neither exceed nor fall short of what is justified by the nature and severity of the offence.

38. The sentencing objectives in Kenya have been captured in the Judiciary Sentencing Policy Guidelines to be the following:

“Retribution: to punish the offender for his criminal conduct in a just manner.

Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: to enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.

Community protection: to protect the community by incapacitating the offender.

Denunciation: to communicate the community's condemnation of the criminal conduct.”

39. Having carefully weighed all the aggravating and mitigating factors, and considering the objectives of sentencing, I am of the firm view that this case calls for a substantial custodial sentence that reflects the gravity of the crime and serves the multiple purposes of punishment, deterrence, community protection, and denunciation.

40. The opportunistic nature of this crime against a vulnerable woman, the accused's exploitation of the deceased's temporary incapacitation, and the devastating impact on the community require a sentence that adequately reflects society's abhorrence of such conduct. The sentence must also serve to protect the community from an offender who has demonstrated predatory behavior against vulnerable individuals.

41. While I note the accused's claim of youth and first-offender status as potential mitigating factors, the evidence of his calculated exploitation of the deceased's vulnerability, the sexual assault that preceded



her murder, and his immediate flight from the scene demonstrates a level of premeditation and moral culpability that significantly outweighs these considerations.

42. An aggravating feature of the present crime is the manner in which the accused exploited the trust and vulnerability of the deceased. Salome Jepkoech Maritim was in a state of temporary incapacitation due to her tobacco habit, a condition known to those around her including the accused. Instead of providing the assistance he purported to offer, the accused used this opportunity to commit the gravest of crimes against her. The conduct of the accused violated the deceased's constitutional rights including her human dignity, bodily integrity, and ultimately her right to life.
43. I must say that Sentencing involves a very high degree of responsibility which should be carried out with a sense of punishing crime, protecting our communities, and discouraging would-be offenders. It is trite law in our jurisdiction that courts have repeatedly emphasized that a sentence imposed by a trial court must always be individualized, considered and passed dispassionately, objectively and upon careful consideration of all relevant factors. This court takes judicial notice of the increasing cases of gender-based violence and femicide which have become a scourge in our society.
44. From the mitigation advanced by the accused person, while he claims to regret his actions, there is insufficient evidence of genuine remorse or any concrete steps taken to address the harm caused. As observed in *S v. Matyityi (2011) (1) SACR 40 (SCA)*:

“There is moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another.”

45. The evidence of sexual assault preceding the murder, combined with the accused's calculated exploitation of the deceased's vulnerability, places this case in a serious category of murder cases. The protection of vulnerable members of society from predators is a paramount duty of the courts. A sentence that fails to adequately reflect the gravity of this crime would fail to serve the interests of justice and community protection.
46. Accordingly, I sentence the accused Samson Kibet Alias Evans Kipkoech Alias Hustler to 18 years' imprisonment with sentence running from 17th July, 2023 pursuant to the provisions of section 333(2) of the Criminal Procedure Code.
47. Right of appeal of 14 days explained.
48. Orders accordingly.

SIGNED, DATE AND DELIVERED AT ELDORET' THIS 8TH DAY OF SEPTEMBER 2025.

.....

R. NYAKUNDI

JUDGE

In the Presence of:

M/s Sidi Kirenge for the State

Mr. Sonkule Advocate for the Accused

The Accused Person

